country it has been held that a suit instituted by a state in its own courts but involving a federal question may be removed by the defendant to a federal court, and the general rule was laid down that the state comes into court as any other plaintiff so far as its opponent's right to defend is concerned. *Abeel* v. *Culberson*, 56 Fed. Rep. 329. Finally, although there is some authority to the contrary, the prevailing view is that an estoppel by deed may be set up against the state. BIG., EST., 5th ed., 340.

Upon principle and analogy, therefore, the correct view would seem to be that the law should be applied in the same way in a suit to which a sovereign is a party as in an action between individuals, provided no express prerogative of the sovereign is thereby infringed. See 15 HARV. L. REV. 59.

DEMURRER TO EVIDENCE IN CRIMINAL CASES. — The demurrer to evidence, deep-rooted as it was in the common law, has generally been superseded by the motion to enter a nonsuit, to direct the verdict, or to exclude the evidence from the jury. For these motions before the court are a less technical procedure than the demurrer to evidence and accomplish the same result of transferring from the jury to the judge the application of the law to the facts. Nevertheless the practice of demurring, although unusual, is still recognized in nearly half the states as a proper form of procedure in civil suits. See *Hopkins* v. *Nashville, etc., Ry. Co.*, 96 Tenn. 409. In criminal cases, however, not only are the instances of the use of a demurrer much less numerous, but there is considerable dispute as to the propriety of this form of procedure at all. West Virginia has recently ranged itself with those jurisdictions which deny the propriety of the demurrer to evidence in criminal cases, although it is allowed there in civil suits. *State* v. *Alderton*, 40 S. E. Rep. 350.

It is objected that if the accused has the right to demur to the evidence the state would have the same right without the consent of the accused, and thus the constitutional safeguard of trial by jury would be taken away. A short answer to this objection would seem to be that in criminal prosecutions a joinder in demurrer is optional, not compulsory as it is in civil suits. See *Baker's Case*, Cro. Eliz. 752 ; *Duncan* v. *State*, 29 Fla. 439. The second argument urged against the propriety of the demurrer is that it deprives the accused of the right to be proved guilty beyond every reasonable doubt, because, it is said, "all doubt must be resolved against the demurrant." The objection seems to rest upon the erroneous assumption that inferences from the evidence must be taken as strongly against the demurrant in criminal as in civil suits. The effect of a demurrer to evidence, it is submitted, is that the defendant contends that upon the evidence presented, the court acting as a jury would not be justified in finding an adverse verdict. See *Trout* v. *Virginia, etc., R. R. Co.*, 23 Gratt. (Va.) 619, 639. The court, therefore, no more than a jury, ought to deprive the accused of reasonable doubts in his favor. But even if it be granted that the accused does by his demurrer lose the benefit of having doubtful inferences taken in his favor, why should he not be allowed to waive this right? This view is held in *Martin* v. *State*, 62 Ala. 240.

On principle, therefore, there seems to be no valid objection to demurrers to evidence in criminal prosecutions provided jury trial may

be waived by consent. The weight of authority too, slightly inclines to this view in the few jurisdictions where the subject has come up. *State* v. *Groves*, 119 N. C. 822; 6 ENC. PL. & PR. 456. Nevertheless, even the courts which allow the demurrer look with disapproval on this "unusual and antiquated practice." Indeed there is nothing to recommend it in preference to the less technical motion before the court. And there are, on the other hand, several disadvantages in its use; for the demurrant waives the benefit of any exceptions taken to prior rulings of the court, and is debarred from introducing more evidence if his demurrer is overruled.

FALSE WARRANTIES BY AN INFANT IN A POLICY OF INSURANCE. — The confusion which may result from the undiscerning use of a term to which radically different meanings are attached in different branches of the law, is forcibly illustrated in a recent Rhode Island decision. An infant in his application for insurance to the defendant life insurance company made a false statement which was incorporated as a warranty in the policy subsequently issued. In a suit by the beneficiary to collect the policy the company contended that the falsity of the warranty rendered the contract void. It was held, however, that the breach of such a warranty by an infant constituted no defence since by allowing it, the court would in effect be making the infant's contract binding upon him. *O'Rourke* v. *John Hancock Mut. Life Ins. Co.*, 50 Atl. Rep. 834. The court arrives at this conclusion through a consideration of various classes of cases, such as false warranties in the sale of chattels, and promissory notes given in payment for things not necessaries: cases in which the infant is free to avoid his contracts. Particular reliance was placed on a decision which refused to allow a defendant employer in a suit by a minor for wages, to set-off the damages caused by the minor's breach of promise to give notice before quitting. *Derocher* v. *Continental Mills*, 58 Me. 217. No case precisely in point was cited in the opinion, nor has any been discovered in the reports.

In all of the cases relied upon by the court, it will be seen that the infant had made some promise, and in accordance with the old common law rule was allowed to avoid it. A warranty, however, does not in all branches of the law include a promise. In a deed, a warranty comprises a representation as to an existing fact as well as a promise. *Bush* v. *Cooper's Adm.*, 18 How. 82. In a charter party, a warranty is a promise which operates as a condition precedent; its breach gives the other party a right to refuse to go on with the contract, or waiving it as a condition, he may sue upon it as a promise. *Behn* v. *Burness*, 3 B. & S. 751. A warranty in sales of personal property is strictly not a condition upon which the contract is based, but a collateral undertaking — a promise, as is shown by the fact that a consideration is necessary to support it. BIDDLE, WAR. IN SALE OF CHATS., § 4. In a contract of insurance, on the other hand, warranty is used as synonymous with condition, and is construed as a "condition precedent, which must be complied with to the minutest detail, or else the contract is rendered void." BLISS, LIFE INS., § 34. A policy of insurance being a unilateral contract, the only promises it contains are the promises of the insurer. The warranties constitute the basis or condition upon which the insurer assumes the liability.